

OCT 18 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM HUGHES CRAVENS,

Defendant - Appellant.

No. 03-30590

D.C. No. CR-01-00108-4-BJR

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Barbara Jacobs Rothstein, District Judge, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.

William Hughes Cravens appeals the 48-month sentence imposed following his guilty plea conviction for mail fraud, in violation of 18 U.S.C. § 1341, and conspiracy to commit mail fraud and wire fraud, in violation of 18 U.S.C. § 371.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction pursuant to 28 U.S.C. § 1291.

We reject Cravens' contention that the district court erred under Federal Rule of Criminal Procedure 32, because the district court clearly did not apply any of the disputed guideline enhancements in determining his sentence. *See* Fed. R. Crim. P. 32(i)(3)(B).

However, because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 915-16 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *Booker* error).

REMANDED.